

Update on State/Federal Discussion Concerning Mine Placement of CCW

Following EPA's publication of its Notice of Regulatory Determination on Wastes from the Combustion of Fossil Fuels in May of 2000 (at 65 Fed. Reg. 32214), the member states of the Interstate Mining Compact Commission (a multi-state governmental organization representing the natural resource and environmental protection interests of its 20 member states) suggested to both EPA and the Office of Surface Mining (OSM) in the U.S. Department of the Interior that an intergovernmental forum would serve as a valuable mechanism to initiate discussions between state and federal governments concerning next steps pursuant to the regulatory determination. This suggestion followed on the heels of a resolution adopted by IMCC in May of 2000 affirming the appropriateness and effectiveness of state regulations and policies for the safe handling, recycling, beneficial use and placement of coal combustion by-products and supporting the management of CCBs without the application of federal RCRA subtitle C requirements. The IMCC states were particularly focused on EPA's finding that, although coal combustion by-products (CCB,s) (or coal combustion wastes (CCW)) did not warrant regulation under subtitle C of the Resource Conservation and Recovery Act (RCRA) as "hazardous waste", the agency had determined that national regulations under subtitle D of RCRA are warranted when these wastes are

disposed in landfills or surface impoundments, and the regulations under subtitle D and/or possible modifications to existing regulations established under the Surface Mining Control and Reclamation Act (SMCRA) are warranted when these materials are used as fill in surface or underground mines. IMCC was especially concerned about the latter, “mine placement” aspects of the determination given the significant interplay between approved state regulatory programs under SMCRA and any potential adjustments to the national SMCRA regulations (which serve as a template for state regulatory programs).

Both EPA and OSM saw the value of proceeding in this manner and the first intergovernmental forum on mine placement of CCW was held on May 15 and 16 in St. Louis, Missouri. The forum was open to all states, not just IMCC member states, and also involved tribal government representatives. The forum began with several presentations from EPA, OSM and state representatives that updated attendees on current mine placement practices and regulatory programs and that allowed attendees to hear about current issues and problems being encountered in the mine placement of CCWs in anticipation of the potential development of a proposed rule by EPA. One of the key objectives of the forum was to engage state and federal representatives affected by the potential proposed mine placement rule in an open

discussion about current challenges being encountered in the field, identifying potential regulatory gaps, anticipating potential inter-agency jurisdictional conflicts, and discussing implementation concerns associated with any new rule. A key outcome of the forum was the establishment of an on-going dialogue among the states and federal representatives concerning the various operational, environmental and economic issues associated with the practice of mine placement of CCW. A copy of the notes from the meeting can be found at EPA's website:

www.epa.gov/epaoswer/other.fossil.index.htm.

The intergovernmental forum was initially followed by a meeting of the states and tribes to prepare for the next federal/state dialogue. The states/tribes-only meeting took place on August 13 and 14 in St. Louis. Among the issues discussed were: characterization methods and tests for CCW; placement requirements; use of liners; closure requirements; pre-placement site characterization and volume restrictions; definition of beneficial use versus classic disposal; the need for federal regulations, guidelines or policies; and which federal agency should take the lead: EPA or OSM. The outcome of this meeting was the development of a draft discussion outline that contains the basic position of the states/tribes concerning the regulation of CCW placement at mine sites. The outline would serve as the basis

for continuing discussions with EPA and OSM regarding the need for national regulations given the adequacy of existing state and tribal regulatory programs. A copy of the outline is available from IMCC. The outline addresses categories of coal ash management; coal ash management principles for beneficial use; coal ash regulatory principles for beneficial use; disposal/placement at minesites other than beneficial use and conclusions. Among the conclusions drawn by the states were the following:

- approved beneficial use determinations by the states preclude the need for further waste regulation by EPA or OSM
- experience at the state level in implementing existing state and federal laws substantiates the adequacy of the existing regulatory structure
- comprehensive federal regulations will be difficult to implement from a nationwide perspective due to differences in regional geology, climate, ash composition and other factors;
- state data and information supports these conclusions and are available for review.

In preparation for the next state/federal dialogue, the states requested that

EPA make available for state review two draft documents: “Regulation and Policy Concerning Mine Placement of Coal Combustion Waste in 26 States” and “Mine Placement of Coal Combustion Waste – State Program Elements Analysis”. Copies of both draft documents were provided to the states in early November and are available from EPA.

The most recent state/tribal/federal meeting took place on November 14 and 15 in San Antonio, Texas. Among the topics discussed at the meeting were: an explanation and status report on EPA’s Minefill Risk Assessment/Modeling (MRAM) Project and its relationship to EPA’s Coal Ash Regulatory Program; a presentation on the state of Illinois’ Data Management System for Mine Placement Activities; Review and Discussion of EPA’s Draft Reports mentioned above; an overview of EPA’s program of site visits and interviews with individual state agencies that regulate mine placement of CCW; and review and discussion of the states’ outline on coal ash management, including the topics of use of coal ash (beneficial use versus disposal); principles for beneficial use of coal ash; the effectiveness of existing state regulatory programs (both coal and noncoal); and interagency cooperation and coordination – both within the states and within the federal government. A copy of the meeting notes is available at EPA’s website,

noted above.

Another meeting of state/tribal/federal government representatives is scheduled for April 15 and 16 in Golden, Colorado in conjunction with OSM's technical interactive forum on "Coal Combustion By-Products and Western Coal Mines". At the next meeting, representatives will discuss updated versions of the two draft EPA reports, following the incorporation of state input resulting from the November meeting; further discussion of the states' draft discussion outline, based on continuing review and analysis by EPA and OSM; and the potential development of prototype national guidelines for beneficial use and ash characterization, based on existing state guidelines and program requirements.

In the meantime, the states/tribes have consistently articulated the following concerns to EPA and OSM, several of which remain to be addressed or resolved within the context of continuing state/tribal/federal government discussions:

- SMCRA appears to serve as an adequate and effective baseline for any type of regulatory analysis concerning mine placement of CCW
- it is essential to examine the effectiveness and comprehensiveness of existing state/tribal programs before adding additional regulatory requirements

- there is a need to coordinate among all applicable statutes/regulations that impact the regulation of mine placement of CCW, including SMCRA, RCRA, the Clean Water Act and the Safe Drinking Water Act. There is a sense that many of the necessary regulatory requirements are already in place in the context of these statutes and their respective regulatory programs.
- there is an absolute need for flexibility to accommodate differences among the states related to geology, climate, ash characterization and agency operation
- there needs to be consideration given to both coal and noncoal sites and the differences between them (possibly a segmented approach)

The states look forward to a continued effective working relationship with EPA and OSM as we seek to design an appropriate approach to the regulation of mine placement of CCW.

Narrative Biography of Gregory E. Conrad

Greg Conrad is Executive Director of the Interstate Mining Compact Commission (IMCC), a multi-state governmental organization representing 20 mineral producing states. Greg has served in his position since 1988 and is responsible for overseeing several issues of importance to the states in the legislative and regulatory arenas including surface mining and reclamation, mine waste, identification and restoration of abandoned mine lands, and various environmental issues associated with mineral production such as surface and ground water quality and quantity.

Prior to joining IMCC, Greg served for nine years as senior counsel with the American Mining Congress, which is now part of the National Mining Association. While with AMC, Greg had primary staff responsibility for several coal related issues including transportation, leasing, research and development initiatives, and surface mining and reclamation.

Greg has spoken and presented papers at a variety of conferences hosted by such organizations as the Eastern Mineral Law Foundation, the Conference of Government Mining Attorneys, the Colorado School of Mines, the Office of Surface Mining, the National Mining Association, the Environmental Law Institute and various state government groups. He has written extensively on mining issues for professional journals and magazines.

Greg graduated from Michigan State University with a degree in business administration and later from the University of Detroit School of Law where he was an associate editor of the law review. He is married, has three children and resides in Chantilly, Virginia.